

APPEAL NO. 021123  
FILED JUNE 12, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 10, 2002. The issue before the hearing officer was whether the appellant/cross-respondent (claimant) had disability from May 4 through August 31, 2001, as a result of his compensable injury on \_\_\_\_\_. The hearing officer determined that the claimant had disability from May 4 through October 1, 2001. The hearing officer further determined that (1) the claimant is entitled to, and the respondent/cross-appellant (carrier) is liable for payment of, temporary income benefits (TIBs) from May 4 through October 1, 2001, in the amount of \$9,975.88; and (2) the claimant is entitled to, and the carrier is liable for payment of, impairment income benefits (IIBs) in the amount of \$5,595.00. The claimant appeals the hearing officer's determination with regard to the amount of TIBs and IIBs owed by the carrier, asserting that the hearing officer's underlying average weekly wage (AWW) calculation is incorrect. The claimant attached wage statements to his appeal in support of a higher AWW. The carrier responds that the matters of AWW and the amount of income benefits owed were not before the hearing officer and may not be addressed on appeal. Notwithstanding, the carrier requests that the Appeals Panel correct the hearing officer's decision to reflect that only \$8,039.24 is owed in TIBs. The hearing officer's disability determination was not appealed by either party and is, therefore, final. Section 410.169.

DECISION

Affirmed as modified.

The hearing officer erred in determining the amount of TIBs and IIBs owed to the claimant by the carrier. As indicated above, the sole issue reported out of the benefit review conference concerned the period of the claimant's disability. In our review of the record, any issue about AWW or the amount of income benefits owed to the claimant was not in dispute or actually litigated by either party in this proceeding. Indeed, the only mention of these matters, on the record, was made by the hearing officer during an interruption of the claimant's closing argument. Because there was no controversy with regard to the specific amount of TIBs and IIBs owed to the claimant, the hearing officer erred in making a determination on these matters. Accordingly, the hearing officer's determination as to actual amounts due to the claimant is stricken from the decision and order.

The claimant attached new evidence to his appeal, to establish his AWW. For the reasons stated above, we decline to consider such evidence on appeal. Should the claimant wish to pursue the issue of AWW, he may request a new proceeding on the matter.

The decision and order of the hearing officer are affirmed as modified.

The true corporate name of the carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

Susan M. Kelley  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Robert E. Lang  
Appeals Panel  
Manager/Judge